S.B.CIVIL WRIT PETITION NO.3703/1995

Rajasthan State Road Transport Corporation & Anr.
v.
Shankerlal and another

DATE OF ORDER :: 26th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.S.Bhati, for the petitioners.
Mr. S.N.Trivedi, for the respondents.

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By this petition for writ a challenge is given by the employer Rajasthan State Road Transport Corporation to validity, propriety and correctness of the award dated 7.12.1994 passed by the Labour Court, Bikaner in Industrial Dispute Case No.110/1990.

The appropriate government under its notification dated 13.6.1990 referred an industrial dispute for its adjudication to the Labour Court, Bikaner in following terms:-

> "WHETHER termination of workman Shri Shankar Lal son of Shri Khemaram, Conductor, by the Assistant Divisional Manager, Rajasthan State Road Transport Corporation, Sriganganagar under the orders of Divisional Manager, Rajasthan State Road Transport Corporation, Bikaner is illegal? If not, then for what relief and amount the workman is entitled?"

A statement of claim was filed by the workman stating therein that he was employed with the employer Corporation on 1.7.1984, however, his name was struck off from the duty roll from 15.12.1984 without assigning any reason and without giving any notice or compensation in lieu of statutory notice as provided under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act of 1947”).

The employer in reply to the statement of claim came with the stance that termination of the workman was not simplicitor but stigmatic as on 15.12.1984 at the time of inspection of Vehicle No.8073 at Peelibanga-Ganganagar route wherein the workman was discharging the duties of Conductor was found carrying six travellers from Longowala to Ganganagar without proper tickets.

The Labour Court accepted an application preferred by the employer under Section 11-A of the Act of 1947 seeking permission to adduce evidence to prove the allegation of misconduct by the workman. On basis of the evidence adduced by the parties the Labour Court found the workman guilty for the misconduct alleged i.e. of having six travellers without proper tickets. A difference of Rs.6/- only with actual cost of proper tickets was settled against the workman. Looking to a meagre value of difference amount the Labour Court held the penalty imposed as

disproportionate to the delinquency and, therefore, while setting aside the order of termination from service ordered for reinstatement with forfeiture of the back wages upto 50%.

While giving challenge to the award impugned the contention of learned counsel for the petitioners is that the workman was found guilty of a grave misconduct, therefore, the Labour Court erred by modifying the same. It is also asserted that as a matter of fact forfeiture of the back wages is no penalty and, therefore, the workman despite proved delinquency was left without any penalty by the Labour Court. Reliance is placed upon the judgment of Hon'ble Supreme Court in the case of Karnataka State Road Transport Corpn. v. B.S.Hullikatti, [(2001)2 SCC 574], wherein while dealing with a case of Conductor carrying ticketless travellers or travellers without proper tickets, Hon'ble Supreme Court held that “it is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well correct fare to be charged.”

Reliance is also placed by counsel for the petitioners upon the judgment of Hon'ble Supreme Court in the case of Regional Manager, RSRTC v. Ghanshyam

Sharma, [(2002)10 SCC 330], holding therein as follows:-

> "3.On a reference being made, the Labour Court invoked jurisdiction under Section 11-A and while upholding the finding that the respondent was guilty of misconduct it directed the respondent's reinstatement with continuity of service but without back wages. The learned Single Judge of the High Court set aside the award which decision has been reversed by the Division Bench. Hence this appeal.
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> 4.This Court in Karnataka SRTC v. B.S. Hullikatti has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court was firmly of the opinion that in cases like the present, orders of dismissal should not be set aside.
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> 5.Furthermore, we agree with the observations of the Single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though under Section 11-A the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however the discretion has to be used

> judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal."

The same view was taken by Hon'ble Apex Court in the case of Divisional Controller, N.E.K.R.T.C. v. H.Amaresh (2006 ARI SCW 3701). In the case aforesaid Hon'ble Supreme Court was of the view that "even short remittance amounts to misconduct". A direction was accordingly given to N.E.K.R.T.C. to immediately discharge the workman from service irrespective of the fact that he served for a quite long period.

In view of the judgments referred above, I am having no doubt that the Labour Court should not have interfered with the penalty imposed upon the respondent workman by the employer. I am also in absolute agreement with learned counsel for the petitioners that forfeiture of back wages is no penalty and, therefore, by interfering with the penalty imposed by the employer the Labour Court left the delinquent employee scot free. However, during the course of hearing on 12.4.2007 it was pointed out by counsel for the respondent workman that in pursuant to the award dated 7.12.1994 the workman has already been reinstated in service on 5.1.1996 and as such he is in employment of the petitioner since then. A direction,

therefore, was given to the employer to submit a statement by way of additional affidavit about the conduct of the respondent workman during his service tenure after reinstatement w.e.f. 5.1.1996, in pursuant thereto an additional affidavit sworn-in by Shri Ashok Thanvi, Legal Assistant with the petitioner Corporation, is filed giving details about conduct of the workman, that reads as follows:-

CHART SHOWING MISCONDUCT COMMITTED BY RESPONDENT WORKMAN AFTER JOINING HIS DUTIES

Charge-sheet Nos.& dates	Charges	Penalties Imposed	Order Nos & dates
1. 1176 dt.23.3.98	found carrying 2 passengers without tickets	fine of Rs.3000/	1520 dt. 30.3.99
2. 6007 dt.15.10.99	found carrying 5 passengers without Tickets	fine of Rs.3000/	7054 dt. 4.12.01
3. 6006 dt.15.10.99	deposited Rs.100 less in Corporation	fine of Rs.500/	7853 dt. 4.12.01
4. 5757 dt.5.10.01	found carrying 5 passengers without Tickets	fine of Rs.3000/	7637 dt. 6.12.01
5. 2085 dt.20.3.03	Due to his full absence a route of 250 km. was cancelled by which huge financial loss was caused to the corporation	fine of Rs.1750	5101 dt. 9.7.03

6.3466 dt.13.5.03	Due to his will full absence a route to 250 km. was cancelled by which huge financial loss was caused to the corporation	fine of Rs.1750/	2894 dt. 15.4.04

From the details mentioned above, it is apparent that the workman was found involved at six occasions with the acts of misconduct and out of those three pertain to carrying ticketless travellers and one for less deposition of the amount of Rs.100/-. In all the matters the employer chose to impose penalty of fine upon the workman but not of dismissal or removal.

Be that as it may, it is not in dispute that the workman is in employment since 1996. It is also informed to the Court at Bar that the respondent workman is in his advance age of about 50 years and he is to support his family. The employer also did not choose to remove or dismiss him for his subsequent acts. Looking to these circumstances, I also do not consider it appropriate to set aside the order of reinstatement made by the Labour Court, however, the respondent workman certainly deserves for a serious penalty.

As such, while ordering for not making payment of any back wages to the workman, the workman

is saddled with a penalty of fine in a tune of Rs.30,000/-, that shall be recovered by the employer from the monthly salary of the workman in 30 equal monthly instalments. With the modifications as above in the award impugned the petition for writ is disposed of.

(GOVIND MATHUR),J.

Kkm/ps.